

JAN 17 2006

**FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, DC 20463**

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR: 5632

DATE COMPLAINT FILED: December 21, 2004

DATE OF NOTIFICATION: December 29, 2004

LAST RESPONSE RECEIVED: January 19, 2005

DATE ACTIVATED: December 20, 2005

EXPIRATION OF SOL: October 27, 2009

COMPLAINANT: Mark Brewer

RESPONDENTS: Iosco County Republican Party
Bush-Cheney '04 Inc., and David Herndon, in his official capacity
as treasurer
Don Hooper for Congress Committee, and Don Hooper, in his official
capacity as treasurer

RELEVANT STATUTES: 2 U.S.C. § 434(c)
2 U.S.C. § 441a(a)(7)(B)(i)
2 U.S.C. § 441d(a)(3)
11 C.F.R. § 100.5(c)
11 C.F.R. § 100.16(a)
11 C.F.R. § 100.24
11 C.F.R. § 109.10(b)
11 C.F.R. § 109.21

INTERNAL REPORTS CHECKED: Disclosure Reports; Commission Indices

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

This matter originated with a complaint filed by Mark Brewer alleging that the Iosco County Republican Party ("ICRP") violated the Federal Election Campaign Act of 1971, as amended ("the Act"), by placing a political advertisement in the *Oscoda Press* on October 27, 2004. The Complainant alleges that: (1) the advertisement constituted an improper in-kind contribution to Bush-Cheney '04 and Don Hooper for Congress; (2) ICRP failed to include an appropriate disclaimer pursuant to 2 U.S.C. § 441d(a)(3); and (3) ICRP failed to properly report the expenditure for the advertisement as required under 2 U.S.C. § 434(c).

In its response, ICRP denies all of the allegations in the complaint. *See* ICRP Response, at 1-2. In addition, both Bush-Cheney '04 and Don Hooper for Congress deny coordinating any expenditures with ICRP. *See* Bush-Cheney '04 Response, at 1; Don Hooper for Congress Response, at 1.

Based on the information set forth in the complaint, the response, and other available information, we recommend that the Commission find no reason to believe that the respondent violated the Act by making in-kind contributions to candidates for federal office or by failing to properly report the expenditure for the newspaper advertisement. In addition, we recommend that the Commission exercise its prosecutorial discretion and dismiss the remaining allegation in the complaint.

II. FACTUAL SUMMARY

ICRP is a local party organization registered as a political party committee with the Michigan Department of State Bureau of Elections.¹ On October 27, 2004, ICRP placed a political advertisement in the *Oscoda Press*, a weekly newspaper published in Oscoda, Michigan.

¹ ICRP has not registered as a political committee with the Commission.

26044134659

The advertisement contained the heading "Vote Republican November 2" and then listed the Republican candidate for each contested election in ballot form. *See* Attachment 1. The advertisement specifically named George W. Bush, Richard Cheney, and Don Hooper, the Republican candidate for Michigan's First District seat in the United States House of Representatives. The advertisement included a disclaimer that stated "Paid for by Iosco County Republicans with regulated funds, P.O. Box 116, Tawas City , MI 48764." *See id.* ICRP provided information indicating the cost of the advertisement was \$158.44. *See* ICRP Response, at 1.

III. LEGAL ANALYSIS

A. ICRP DID NOT MAKE IN-KIND CONTRIBUTIONS TO CANDIDATES FOR FEDERAL OFFICE

Based on the evidence available, it does not appear that ICRP made an in-kind contribution to either Bush-Cheney '04 or Don Hooper for Congress in violation 2 U.S.C. § 441a(a)(7)(B)(i). If ICRP's political advertisement was coordinated with Bush-Cheney '04 or Don Hooper for Congress, it could be considered an in-kind contribution from ICRP to the campaign committees, which for a congressional campaign would be subject to the contribution limitations of the Act and for a publicly funded presidential campaign would be prohibited. *See* 2 U.S.C. § 441a(a)(7)(B)(i). However, no information has been presented or is otherwise available suggesting that there was any coordination, within the meaning of 11 C.F.R. §§ 109.20 or 109.21, between ICRP and either campaign committee in connection with this advertisement. Moreover, and as noted previously, both Bush-Cheney '04 and Don Hooper for Congress specifically denied discussing any campaign activities or expenditures with ICRP. Without additional information, the complaint lacks a "sufficiently specific allegation" to warrant an

26044134660

1 investigation. *See* MUR 4851 (Michigan Republican State Committee) (insufficient facts alleged
2 to support reason to believe finding on a coordination theory). This Office therefore
3 recommends that the Commission find no reason to believe that respondents violated the Act by
4 making or receiving an in-kind contribution to either Bush-Cheney '04 or Don Hooper for
5 Congress in connection with the complaint filed in this matter.

6 B. ICRP FAILED TO INCLUDE THE APPROPRIATE DISCLAIMER IN ITS
7 ADVERTISEMENT

8 Despite its attempt at compliance, ICRP did not include a complete disclaimer in its
9 October 27, 2004, political advertisement. The Act provides that, whenever any person makes an
10 expenditure for the purpose of financing communications expressly advocating the election or
11 defeat of a clearly identified candidate, such communication must include a disclaimer. 2 U.S.C.
12 § 441d(a). If the communication was not authorized by a candidate, an authorized committee of
13 a candidate or an agent thereof, but paid for by other persons, the disclaimer "shall clearly state"
14 the name and permanent street address, telephone number or world wide web address of the
15 person who paid for the communication and state that the communication was not authorized by
16 any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3).

17 In this instance, the advertisement at issue did not include ICRP's proper name or state
18 that the communication was not authorized by any candidate or candidate's committee.
19 Accordingly, it appears that ICRP violated 2 U.S.C. § 441d(a)(3).

20
21
22
23 However,

26044134661

1 because of the nominal amount paid for the advertisement and ICRP's limited federal activity,
2 this Office recommends the Commission exercise its prosecutorial discretion and dismiss this
3 matter as it pertains to the alleged violation of 2 U.S.C. § 441d(a)(3). *See* Heckler v. Chaney,
4 470 U.S. 821 (1985).

5 C. ICRP WAS NOT REQUIRED TO REPORT THE COST OF THE
6 ADVERTISEMENT TO THE COMMISSION

7 Even if the cost of ICRP's advertisement qualifies as an independent expenditure, by
8 making an independent expenditure of only \$158.44, ICRP was under no obligation to report its
9 activities to the Commission. The Act requires that entities or persons other than political
10 committees that make independent expenditures in excess of \$250 during a calendar year must
11 report the independent expenditures by filing a Form 5 with the Commission. 2 U.S.C. § 434(c);
12 11 C.F.R. § 109.10(b). ICRP's advertisement, which only cost \$158.44, did not meet the \$250
13 threshold and, therefore, would not trigger the reporting requirement. This Office therefore
14 recommends the Commission find no reason to believe that ICRP violated 2 U.S.C. § 434(c).

15 IV. RECOMMENDATIONS

- 16 1. Find no reason to believe that the respondents violated the Act by making
17 or receiving an in-kind contribution to either Bush-Cheney '04 or Don
18 Hooper for Congress in connection with the complaint filed in MUR 5632;
- 19 2. Find no reason to believe that the Iosco County Republican Party violated
20 2 U.S.C. § 434(c) by failing to report the cost of its October 27, 2004,
21 newspaper advertisement;
- 22 3. Dismiss the remaining allegation in the complaint filed in MUR 5632;
- 23 4. Approve the appropriate letters; and
- 24

26044134662

5. Close the file.

Lawrence H. Norton
General Counsel

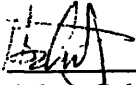
Rhonda J. Vosdingh
Associate General Counsel
for Enforcement

Date

1/17/06

BY:


Ann Marie Terzaken
Assistant General Counsel


Adam Schwartz
Attorney

Attachment
ICRP Ballot Advertisement

26044134663

26044134664

ATTACHMENT 1

Vote Republican November 2

Bush/Cheney: For a Safer, Stronger America

PROMISES KEPT:
Slashed the Marriage Penalty
Abolished the Death Tax
Doubled the Child Credit
Expanded Charitable Giving
Lowered All Tax Rates
Gained Senior Prescription Benefit
Gained Education Reform
Enacted the Patriot Act
Ended Partial Birth Abortion
Implemented Homeland Security



President George W. Bush



Vice President Dick Cheney

Send a conservative voice
to Washington



Don Hooper
Representative in Congress

Paid for by Iosco County Republicans with regulated funds, P.O. Box 116, Thomas City, MI 48764

Vote for Common Sense and Conservative Values



Bruce R. Rendon
State Representative

Michigan Supreme Court Justices



Stephen J. Markman
Incumbent Justice



Brian Keith Zahra
(Appeals Judge)

4th District Court of Appeals



Donald S. Owens
Incumbent Appeals Judge



William C. Whitbeck
Incumbent Appeals Judge

State Board of Education: Nancy Danhof, Robert M. Smart
University of Michigan Board of Regents: Patrick Anderson, Carl Meyers
Michigan State University: Melanie Foster, Randall Pittman
Wayne State University Board of Governors: Susan Licata Haroutunian,
Paul C. Hillemonds

The following county and township candidates are members of the Iosco County
Republican Party and are supported by the County Republican Executive Committee



Gary W. Rupp
County Prosecutor



Craig Herriman
County Sheriff



Mike Welsh
County Clerk



Bonita M. Coyle
County Register of Deeds



Gary R. Adams
Drain Commissioner

Clyde Soucie, County Commission District 1
Jeffrey Matthews, County Commission District 2
John Moehring, County Commission District 4
Stephanie Wentworth, Alabaster Township Supervisor
James Svoboda, Baldwin Township Supervisor
Robert W. Huebel III, Oscoda Township Supervisor
Alan Strickland, Oscoda Township Clerk
Jaime McGuire, Oscoda Township Treasurer
Rick Binkowski, Oscoda Township Trustee
Larry Zucal, Oscoda Township Trustee

Free literature on the candidates is available at the Iosco County Republican Headquarters, US-23 in Thomas City and Oscoda.

Make the Wise Choice. Vote Republican

Paid for by Iosco County Republicans with regulated funds, P.O. Box 116, Thomas City, MI 48764